

No. 5:18-CR-00452-FL-1

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Case 5:18-cr-00452-FL Document 588 Filed 07/14/20 Page 1 of 3

Defendant represents that, consistent with the court's June 18, 2020, standing order on COVID-19 practices at the New Bern courthouse, he is a vulnerable individual because he is 59 years of age and suffers from Type II diabetes, chronic gastritis, arterial hypertension, obesity, and gastroesophageal reflux disease. Defendant further represents that his lead counsel has not been able to meet with him personally due to restrictions imposed by Albemarle District Jail, which only recently resumed attorney visitations. Lead defense counsel also informs the court that the State of New York has only recently allowed limited access to his law firm's office, that a 14-day quarantine applies to return travel from North Carolina, and that his firm continues to operate remotely. For these reasons, defendant asks the court to continue trial until at least August 31, 2020, or a date thereafter as determined by the court, which provides at least two weeks from the conclusion of trial on counts 27–29 and commencement of trial on the remaining counts.<sup>1</sup>

Defendant conferred with the government, which does not have an objection to a continuance of trial to begin August 31, 2020, so long as it proceeds immediately to trial of the remaining counts. The government represents that it has adjusted its expected trial time on Counts 27–29, forecasting a total of three days' trial time.

Taking the representations made by the parties into account, the court grants defendant's motion for continuance for the reasons discussed by the court above. While the court understands New York's quarantine order makes travel difficult for lead defense counsel, a 14-day respite is unwarranted. A modest respite is allowed.

Based on the foregoing, defendant's motion to continue trial (DE 587) is GRANTED. Trial of counts 27–29 of the fourth superseding indictment is CONTINUED and will commence at New

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<sup>1</sup> Defendant also argues that COVID-19 may impair the fairness of his trial, citing putative constitutional concerns with the randomness of the jury venire, the attentiveness of jurors, use of mask wearing, and public access to trial proceedings. These grounds all are susceptible to address without need for any continuance and, accordingly, arguments predicated upon them find no favor with the court.

Bern Monday, August 31, 2020, with attorney conference with the court at 9:00 a.m. and jury selection beginning at 9:30 a.m. Trial of all remaining counts against defendant is CONTINUED until Tuesday, September 8, 2020. The court finds that the ends of justice served by these continuances outweigh the best interests of the public and the defendant in a speedy trial.

SO ORDERED, this the 14th day of July, 2020.

  
LOUISE W. FLANAGAN  
United States District Judge